

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

**In the Matter of**

**Unbundled Access to Network Elements**

**Review of the Section 251 Unbundling  
Obligations of Local Exchange Carriers**

WC Docket No. 04-313

CC Docket No. 01-338

**REPLY COMMENTS  
OF THE  
TELECOMMUNICATIONS REGULATORY BOARD  
OF  
PUERTO RICO**

The Telecommunications Regulatory Board of Puerto Rico (“the Board”), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

**I. INTRODUCTION**

The Board, created in 1996, is the state regulatory body in the Commonwealth of Puerto Rico, charged with promoting a transition from a telecommunications market dominated by a state-owned monopoly to a market characterized by free and open competition. In the eight years since its creation, the Board has overseen a telecommunications environment that has changed. The Puerto Rico Telephone Company (“PRTC”), once a government-owned Incumbent Local Exchange Carrier (“ILEC”), has been substantially privatized and is now controlled by Verizon Communications Inc. A level of competition is being offered by a number of new market entrants including Centennial Puerto Rico License Corp. (“Centennial”) and WorldNet Telecommunications, Inc. (“WorldNet”).

Nevertheless, competition in the local telephone market in Puerto Rico has been slow to develop and robust facilities-based competition has yet to flourish.

Against this background, the Board conducted a proceeding in response to the Federal Communications Commission (“FCC” or “Commission”) *Triennial Review Order*.<sup>1</sup> The Board examined whether to rebut the FCC’s national finding of “no impairment” for the unbundling of local circuit switching to serve end users using DS1 capacity and above loops (“Enterprise Customers”) in defined Puerto Rico markets.<sup>2</sup> Based on the record of that proceeding, the Board found that because of operational barriers present in the local telecommunications market, Competitive Local Exchange Carriers (“CLECs”) are impaired without the ability to obtain unbundled local switching to serve Enterprise Customers. Consequently, on December 30, 2003, the Board filed a Waiver Petition, describing the Board’s findings and requesting that the Commission allow the continuation of PRTC’s provision of local circuit switching for Enterprise Customers. As yet, the Commission has not acted on the Board’s Waiver Petition.

In these Reply Comments, the Board responds principally to WorldNet Telecommunications, Inc., the only commentor providing extensive Puerto Rico-specific comments.

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<sup>1</sup> *Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (2003); *aff’d in part, remanded in part, vacated in part, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

<sup>2</sup> Enterprise Customers should be distinguished from those end users using below DS1 capacity loops (“Mass Market Customers”).

## **II. DISCUSSION**

### **A. The Role of the State Commissions**

In its Comments, WorldNet proposes a role for state commissions, such as the Board, in determining UNE availability in various markets within a state. WorldNet suggests a model based upon the “pole attachment” complaint procedure found in Section 224(c) of the Communications Act. Leaving aside the question of whether Congressional authority would be required, or whether the pole attachment model is the most appropriate, we agree with WorldNet that state commissions could provide the “fact-finding” expertise in any impairment proceeding, without compromising the FCC’s ultimate authority. We support WorldNet’s proposal.

### **B. Impairment Findings In Puerto Rico**

#### **1. The WorldNet Comments**

WorldNet argues that Puerto Rico competitors are clearly impaired without access to UNE switching, transport, high capacity loops and entrance facilities. First, WorldNet marshals the facts it believes necessary to reach this conclusion: primarily the unique characteristics of the Puerto Rico market, including the lack of a robust secondary market, distance and isolation, inferior ILEC service, incumbent dominance, and lack of Section 271 requirements.<sup>3</sup>

Second, WorldNet argues that, because of significant and nationally unprecedented operational problems associated with obtaining access to PRTC’s loops, competitors have no option other than using PRTC local switching to gain access to Mass Market Customers. This is particularly the case, according to WorldNet, when considering the touchstone for mass-market

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<sup>3</sup> WorldNet echoes the Board’s determination that separation of Puerto Rico into distinct markets “effectively does not matter” and asks the FCC to treat all of Puerto Rico as one market.

impairment, the batch hot cut process. According to WorldNet, PRTC had never even provided a cross-connect, much less mass batch hot cuts.

Third, WorldNet argues that actual switch deployment – another impairment touchstone – is minimal in Puerto Rico. PRTC owns all but 4 of the 108 local service switches in Puerto Rico, and only one CLEC has deployed those 4. Further, WorldNet maintains that there is no meaningful UNE-L competition in Puerto Rico, that the collocation process is “highly problematic”, and that PRTC is unwilling and unable to provide wholesale and other services necessary for CLEC switch deployment.

Moreover, WorldNet maintains that an economic barrier to CLEC entry exists in Puerto Rico since the likely revenues would not justify CLEC service without access to PRTC switching, transport and high capacity loop and entrance facilities.

In sum, WorldNet argues that competitors in Puerto Rico are impaired without access to both mass market and enterprise switching, transport and high capacity loops in Puerto Rico. WorldNet supports keeping these elements available in Puerto Rico at market-opening TELRIC rates.

## **2. The Board's Reply**

The Board has not conducted a proceeding to examine whether CLECs providing service to Mass Market Customers are impaired without access to Unbundled Network Elements. We have, however, conducted such a proceeding in connection with Enterprise Customers and have concluded that CLECs in Puerto Rico would be impaired without access to local circuit switching. We filed a Waiver Petition to rebut the FCC's nationwide “no impairment” finding. Only the Board, among all other State commissions, sought to rebut that finding.

Without prejudging any proceeding we may conduct to consider mass market impairment, the Board wishes to emphasize the potency of our conclusions in that Waiver Petition proceeding. We found that competitive markets in Puerto Rico were simply not sufficiently mature to reach the threshold where facilities-based competition should receive preferential policy treatment. The operational barriers to competition identified in that proceeding were significant and substantial. Nothing in the last ten months has occurred to diminish our concern for the competitive marketplace in Puerto Rico.

Where the WorldNet Comments refer to our Enterprise Customer proceeding, they accurately reflect the record. We urge the Commission to reflect upon the unique characteristics of Puerto Rico when considering future UNE rules. It is certainly true with regard to the enterprise market that Puerto Rico competitors are impaired without access to local circuit switching. It would be an egregious error for the Commission to simply include Puerto Rico in any nationwide findings of no-impairment for Mass Market Customers, as it did with Enterprise Customers.

### **III. CONCLUSION**

For these reasons, and to the extent reflected herein, the Telecommunications Regulatory Board of Puerto Rico supports the Comments filed by WorldNet Telecommunications and urges the FCC to take unique Puerto Rico qualities into consideration when making unbundling decisions. We also request that the Commission take prompt action on our Waiver Petition for Enterprise Customers.

**TELECOMMUNICATIONS REGULATORY  
BOARD OF PUERTO RICO**



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